FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 13/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71350/2017-SM[BR] dated 21/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70417/2017	**Bridal Jewellery Mfg Co** 179,nsez NOIDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3Advocate(s) / Consultant(s):

Abhinav Kalra, C.A
G-15,SECTOR-3,
NOIDA,
UTTAR PRADESH
201301

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/70417/2017-ST[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/373/2016-17 dated 03/03/2017 passed by Commissioner of Central Excise (Appeals-I), Meerut)

M/s Bridal Jewellery Mfg Co. **Appellant**

Vs.

Commissioner of Customs, C.E. & S.T., Noida **Respondent**

Appearance:

Shri Abhinav Kalra, Chartered Accountant, for Appellant
Shri Pradeep Kumar Dubey, Supdt (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 21/09/2017
Date of Decision : 21/09/2017

FINAL ORDER NO. 71350/2017..........

Per: Anil Choudhary

The issue in this appeal filed by the appellant is that the appellant is manufacturer and exporter of Jewellery, having its manufacturing unit located at NSEZ, Noida, is whether they are entitled to refund of input service tax on banking services claim to be utilised for the purpose of export.

2. The brief facts, as per the show cause notice dated 23/04/2015 for the period January, 2014 to March, 2014 are that the appellant is a SEZ unit. They claimed

refund against payment of service tax on taxable services as defined in clause (105) of Section 65 of the Finance Act, 1994, which are provided in relation to the authorised operations in a Special Economies Zone, and received by a unit of SEZ, which are exempted from the whole of the service tax leviable thereon under Section 66 of the Finance Act. The appellant filed refund claim for Rs.1,75,034/- on 20/10/2014 for the period January, 2014 to March, 2014 under Notification No.12/2013-ST. The main allegation in the SCN is that the appellant have claimed refund of Rs.1,75,034/- against the banking services, as mentioned in the table annexed with Form A-4). Whereas on verification of bank statement and export collection payment advices, it appeared that address of the appellant is mentioned as- "2705, Basement, Bank Street, Karol Bagh, New Delhi", which is different from the registered office of the appellant. During verification it was observed that at present of the premises of the appellant at "179, NSEZ, Noida" is registered with jurisdictional Range-17, Service Tax Division-IV, Service Tax Commissionerate, Noida under service tax registration No.AADFB0557CSD002. Further, the appellant under the same name having premises at "2705, Basement, Bank Street, Karol Bagh, New Delhi,

Am

which is registered with the Range-11, Service Tax Division-III, Service Tax Commissionerate, Delhi-I under Service tax registration No.AADFB0557CSD001. Both the assessee codes are active and the copy generated from EASIEST regarding assessee code details. It appeared that the appellant have two separate registered premises with two different service tax registration codes. During verification the appellant submitted a copy of ST-3 for the period April, 2013 to September, 2013 filed in Range-IV, Service Tax Division-I, New Delhi and they have claimed Cenvat credit in their ST-3 return. It appeared that the appellant is claiming Cenvat credit of input and input services used at that registered premises in their ST-3. Accordingly, it appeared that the documents submitted by the appellant in support of the refund claim do not belong to their factory premises registered with the Central Excise office at Noida, as it pertains to the premises at "2705, Besement, Banki Street, Karol Bagh, Delhi Commissionerate". Accordingly, appellant required to show cause, why the refund of as input tax credit be not rejected. The SCN was adjudicated on contest vide Order-in-Original dated 21.01.2016 and the Original authority rejected the refund claim. Being aggrieved, the appellant preferred appeal before learned Commissioner

(Appeals) who vide the impugned order was pleased to reject the appeal and upholding the rejection order of Original authority.

3. Being aggrieved the appellant is before this Tribunal. The learned Counsel for the appellant urges that it is an admitted fact that the appellant company does not have any other activity of business at their Head office located at at "2705, Besement, Banki Street, Karol Bagh, Delhi". Further, the appellant have only one manufacturing unit located at NSEZ, Noida. The learned Counsel have further urges that the separate Service Tax Registration Number at their Head office premises was taken under some wrong advice, which have subsequently been surrendered and cancelled by the Department. The learned counsel further states that the issue is no longer res-integra and in their own case for the period October, 2014 to December, 2014, wherein similar refund claim was made, the learned Assistant Commissioner after taking notice of all the facts aforementioned have been pleased to allow and sanction the refund, observing that during verification of bank statement and export collection payment advices, he found that the appellant had their unit at 179, NSEZ, Noida and further they had registered an administrative

office at "2705, Besement, Banki Street, Karol Bagh, Delhi". So they had taken service tax registration numbers in this regard. The Chief Manager of the Canara Bank overseas branch, Connaught circus Branch, New Delhi and also the Manager of State Bank of Hyderabad, Commercial Branch, Janpath, New Delhi had clarified by way of writing letter, addressed to the Deputy Commissioner, Service Tax, Division-IV to the effect that the appellant company had been provided loan facilities for its manufacturing unit at Noida. Service tax is charged by bank for service provided to the main factory/unit of the appellant. The advices of such service tax recovered from the appellant are issued at registered office address, which is in Delhi for administration purposes only. The Assistant Commissioner also relied upon the preceding order in the case of M/s Roto Pump Ltd. also located in NSEZ, Noida wherein under similar facts and circumstances, the refund was allowed and the Order-in-Original in question was accepted by the competent authority of the Department. This is to be also observed that it is a technical/procedural lapse. Further, referring to CBEC Circular No.112/6/2009-ST dated 12th March, 2009 it is observed that the board has emphasized that on technical/procedural lapse the refund cannot be denied. Further, although there is no doubt that services in question have been received by the appellant and payment thereof, had been made.

4. The learned A.R. for revenue have relied on the impugned order. He has further stated that the Cenvat credit is specific to the registration number in the facts of the present case, admittedly, there were two registration numbers at the relevant time and the appellant had disclosed the receipt of input service in their registration number related to the Head office and not to the factory, as such the refund have rightly denied.

5. Having considered the rival contentions, I find that it is an admitted fact that the appellant has got only one manufacturing unit at "179, NSEZ, Noida" and another unit of appellant was working as Head office at "2705, Besement, Banki Street, Karol Bagh, New Delhi". It is further admitted fact that there is no separate business activity in their Head office other than the business of manufacture and export of jewellery. I further take notice of the practice that business concerns normally take loan facilities and/or banking facilities from a Bank Branch located near to the Head office for the sake of administrative convenience and business exigencies. Further, the Bank Officers have certified that the services

provided to the appellant, the invoice of which addressed to the Head office are actually provided to the factory located at Noida. Under such admitted facts, I hold that the substantial benefit cannot be denied for mere technical or venial breach of the procedural law.

6. Accordingly, I set aside the impugned order and allow this appeal with consequential benefits.

7. I further direct the concerned Adjudicating authority to grant the refund, within a period of 30 days from the receipt or the service of a copy of this order, along with interest, as per rules. Let order be issued **Dasti.**

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
13\11\17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001